

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Smiles Fuel Oil Co, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Years Ending 5/31/75 & 5/31/77. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany


Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Smiles Fuel Oil Co, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Smiles Fuel Oil Co, Inc.  
686 Morgan Avenue  
Brooklyn, NY 11222

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
15th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Smiles Fuel Oil Co, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Years Ending 5/31/75 & 5/31/77. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Henry Reininger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry Reininger  
40 1st Ave.  
New York, NY 10009

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
15th day of July, 1983.

Connie A. Hagelund

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

July 15, 1983

Smiles Fuel Oil Co, Inc.  
686 Morgan Avenue  
Brooklyn, NY 11222

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Henry Reininger  
40 1st Ave.  
New York, NY 10009  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
SMILES FUEL OIL COMPANY, INC.  
for Redetermination of a Deficiency or for  
Refund of Corporation Franchise Tax under  
Article 9-A of the Tax Law for the Fiscal  
Years Ending May 31, 1975 and May 31, 1977.

---

:  
:  
:  
:  
:  
:  
:

DECISION

Petitioner, Smiles Fuel Oil Company, Inc., 686 Morgan Avenue, Brooklyn, New York 11222, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ending May 31, 1975 and May 31, 1977 (File Nos. 24748 and 29086).

Petitioner has requested that this matter be submitted to the State Tax Commission for a decision without the necessity of a formal hearing, based on the record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether the investment tax credits claimed by petitioner on the purchase of transportation equipment were properly disallowed by the Audit Division.

FINDINGS OF FACT

1. Petitioner, Smiles Fuel Oil Company, Inc., filed a Form CT-3, New York State Corporation Franchise Tax Report, for its fiscal year ending May 31, 1975 on which it reported corporation franchise tax of \$1,708.25 after claiming an investment tax credit of \$604.50 for what it described on its tax return as "transportation equipment" which it purchased for \$30,225.00 during such period.

2. Petitioner filed a CT-3, New York State Corporation Franchise Tax Report, for its fiscal year ending May 31, 1977 on which it reported corporation franchise tax of \$5,414.65 after claiming an investment tax credit of \$555.99 for what it described on its tax return as "machinery and other equipment" which it purchased for \$27,799.41 during such period.

3. On January 7, 1977, the Audit Division issued a Statement of Audit Adjustment against petitioner for the period ending May 31, 1975 and asserted therein a tax deficiency of \$604.50 plus interest under Article 9-A of the Tax Law. The following explanation was provided:

"The investment tax credit claimed on transportation equipment has been disallowed. Section 210.12, providing the investment tax credit, states that qualified property must be principally used by the taxpayer in the production of goods. Transportation equipment does not qualify."

4. On April 20, 1977, the Audit Division issued a Notice of Deficiency against petitioner imposing a corporation tax deficiency of \$604.50 plus interest for the period ending May 31, 1975.

5. On October 5, 1979, the Audit Division issued a Statement of Audit Changes against petitioner for the period ending May 31, 1977 asserting therein a tax deficiency of \$555.99 plus interest under Article 9-A of the Tax Law. The following explanation was provided:

"Article 9-A, Section 5-2.2 states in part that in order to qualify for the investment tax credit the property claimed must be used in the production of goods by manufacturing. Since the nature of your business is retailing of fuel oil, the credit claimed for investment tax credit has been disallowed."

6. On February 14, 1980, the Audit Division issued a Notice of Deficiency against petitioner imposing a corporation tax deficiency of \$555.99 plus interest for the period ending May 31, 1977.

7. Petitioner is a closely held retail fuel oil business. Philip Silverglate, petitioner's President, owned one hundred percent of its stock during the years at issue.

8. It appears from the record, herein, that petitioner mistakenly believed that the qualifying standard for an investment tax credit for purposes of the New York corporation franchise tax was the same as that for the Federal corporate income tax. Petitioner wrote upon a Notice and Demand for Payment of Corporation Tax Due for the period ending May 31, 1975, which it returned to the Audit Division, the following:

"The Federal government allows investment [tax] credit on transportation equipment. In this case, the equipment is the main factor in the retail fuel oil business. These trucks contain machinery such as fuel oil pumping equipment, reels and hoses, meter devices. The only difference between our machinery which is located on a truck and machinery located in a factory (which is eligible for investment [tax] credit) is that our machinery is mobile in order to deliver fuel to the various accounts we service."

9. In its petitions, petitioner contended as follows:

"The transportation equipment in question has specialized equipment in it which enables it to function in a unique manner. The fuel oil which is transported in the truck must be pumped and metered into the homeowner's tank. Therefore the machinery on the truck processes the fuel oil from the tank on the truck into the homeowner's oil storage tank."

#### CONCLUSIONS OF LAW

A. That pursuant to Tax Law § 210.12(b), a corporation subject to taxation under Article 9-A of the Tax Law is entitled to an investment tax credit with respect to tangible personal property which is depreciable pursuant to I.R.C. § 167, has a useful life of four years or longer, is acquired by purchase as defined in I.R.C. § 179(d), has a situs in New York and is "principally used by the taxpayer in the production of goods by manufacturing, processing,

assembling...". Pursuant to Findings of Fact "3" and "5", supra, the only issue to be resolved is whether the "transportation equipment" and "machinery and other equipment" was "principally used by the taxpayer in the production of goods by...processing...".

B. That processing is an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition. Matter of Continental Terminals, Inc., State Tax Commission, March 5, 1982. The equipment for which petitioner claimed investment tax credits was not used by petitioner in the production of goods by processing.

C. That the petition of Smiles Fuel Oil Company, Inc. is denied and the Notices of Deficiency, supra, are sustained.

DATED: Albany, New York

JUL 15 1983

STATE TAX COMMISSION

Roderick W. Cline  
PRESIDENT

Frank R. Koenig  
COMMISSIONER

Mark J. Dwyer  
COMMISSIONER